

BRUCE H. LEVITT, ESQ.
LEVITT & SLAFKES, P.C.
76 South Orange Ave. - Suite 305
South Orange, New Jersey 07079
(973) 313-1200
BY: BRUCE H. LEVITT, ESQ. (BL9302)
ATTORNEYS FOR DEBTOR

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re: : **Case No.:08-13191 DHS**
:
PHILIP L. MERRILL, : **Chapter 13**
:
:
: **REPLY TO OPPOSITION OF**
: **LMS SERVICES, INC. TO MOTION**
Debtor. : **TO RECLASSIFY CLAIM**
: **(Hearing Date: August 13, 2008)**
:

Debtor, Philip L. Merrill, replies to the opposition to motion to reclassify the claim of LMS Services, Inc. as follows:

1. Debtor agrees that the judgment creditor must make all reasonable efforts to exhaust personalty before levying on real property. Here the creditor did not do so.
2. Here, while the creditor asserts that it moved for an Order in Aid of Litigants Rights in the Superior Court, nothing has been submitted to indicate the outcome of that motion or what further steps were taken.
3. Moreover, while the creditor indicates that a levy was made, it is not clear that the levy was as to the real or personal property owned by the debtor. The court's attention is drawn to Judge Wizmur's decision in In re Mariano, 339 B.R. 344 (Bankr. N.J. 2006), where the creditor specifically directed the Sheriff, by letter, to levy on the real property.

4. Similarly, in the Mariano case, Judge Wizmur found that reasonable efforts were made by the creditor where, in addition to seeking information from the debtor, investigative reports were also ordered. There is no assertion here that such steps were taken.

5. Accordingly, it is respectfully submitted that under the very authority cited by the creditor, given the facts submitted to this court, LMS Services, Inc. does not have a lien superior to the bankruptcy trustee.

LEVITT & SLAFKES, P.C.
Attorney for Debtor
By: /s/ Bruce H. Levitt
BRUCE H. LEVITT, ESQ.

Dated: August 12, 2008